



Texas Board of Chiropractic Examiners

Thursday, November 19, 2020

BOARD MEETING: 9:00 A.M. – Final Adjournment at 12:26 P.M.

William P. Hobby Building
333 Guadalupe St., Suite 3-825
Austin, Texas 78701

*****NOTICE: This Board meeting was conducted electronically on the Internet via video conference. *****

BOARD MEETING MINUTES

The Texas Board of Chiropractic Examiners (Board) met on November 19, 2020, to consider and act as necessary on matters within the jurisdiction of the Board, which are listed on the agenda established for this meeting.

1. Call to order and roll call:

Action Taken: Board President Dr. Mark Bronson called the meeting to order at **9:01 A.M.**
Board Secretary Dr. Scott Wofford called the roll.

Present Members:

Dr. Mark Bronson
Dr. Michael Henry
Dr. Nicholas Baucum
Dr. Mindy Neal
Dr. Debra White
Ms. Ebony Todd, J.D.
Mr. Brandon Allen
Dr. Scott Wofford

Absent Members:

Mr. Gus Ramirez

Board Staff Present:

Patrick Fortner, Executive Director
Christopher Burnett, General Counsel
Jennifer Hertsberg, Director of Operations
Sarah Matthews, Director of Licensing
Norma Rodriguez, Director of Enforcement
James Elliott, Field Investigator, Dallas
Joseph McLaughlin, Staff Attorney



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Eight of the nine Board members were present and Dr. Bronson announced that a quorum was established.

2. Discussion and approval of the minutes for the Board meeting held on August 20, 2020:

Action Taken: NEAL MOVED and BAUCUM SECONDED to approve the minutes from the August 20, 2020 Board meeting. The Board **APPROVED** the motion unanimously.

3. President's Report:

Dr. Bronson began by revisiting the Board's mission statement and discussing the Board's key functions.

Dr. Bronson then discussed recent activities of the Board:

- On September 16, 2020, the Texas Supreme Court heard oral arguments and received briefs relating to ongoing litigation involving the Board.
- On October 7 and 8, 2020, the Federation of Chiropractic Licensing Boards (FCLB) held its district meeting by zoom video conference.
- On October 13, 2020, the Board held a stakeholder meeting regarding the use of stem cells in chiropractic.
- On November 14 and 15, 2020, the National Board of Chiropractic Examiners (NBCE) held its Part 4 Examinations. Dr. Bronson, Dr. White, and Dr. Neal participated as examiners.

Dr. Bronson then announced future events:

- The next FCLB annual congress is scheduled for April 29 through May 2, 2021.
- The next NBCE Part 4 Examination is scheduled for May 2021.

4. Board Committee reports:
a. Rules Committee

Dr. Henry announced that the rule being considered by the committee regarding membership and concierge practices would require additional consideration before a proposal would be offered.

b. Enforcement Committee

Dr. Baucum announced that the committee had met twice since the August 2020 Board meeting and was able to close out a significant number of older cases. Dr. Baucum also suggested that the Education Standards Committee might consider requiring sexual misconduct training to address increasing complaints on the subject.

NOTE: At this time, Mr. Ramirez arrived and Dr. Bronson announced that all 9 Board members were now present.

c. Education Standards Committee

Dr. White announced that the committee had approved 8 new courses for continuing education credit, all of which were online courses. In total, 14 courses were approved in 2020.

Dr. White and others discussed the possibility of requiring examinations after continuing education presentations in order to receive credit.

Mr. Burnett discussed his progress in updating the Board's Jurisprudence Examination and review course.

d. Licensing Committee

Ms. Todd announced that she had nothing to report other than items already included on the agenda.

5. Executive Director and Staff Reports:

a. Executive Director

Mr. Fortner provided an update on the progress of the ongoing new database project and explained that a projected deadline for the new database to be live was some time in February 2021.

Mr. Fortner then discussed the budget and the implications of potential budget cuts due to the economic downturn.

Discussion included Enforcement staff issues and potential short term solutions to assist the investigators in shortening case closure times.

Dr. White asked some questions regarding the agency's COVID response and its effect on staff. Mr. Fortner discussed the staff's remote work policy. Dr. White asked a follow-up question regarding the new building in the Capitol Complex and the expected transition to the new office.

b. Director of Operations

Ms. Hertsenberg's report included a financial report of the first 2 months of Fiscal Year 2021. She also noted that the Board is on track with its current expenditures and revenues.

Mr. Ramirez asked a question regarding travel expenses and Ms. Hertsenberg noted that there were no travel expenses for the first 2 months of Fiscal Year 2021. Mr. Ramirez asked whether the travel budget could potentially be used for staffing solutions.

Dr. Neal and Mr. Fortner both thanked Ms. Hertsenberg for her initiative in creating a user guide for the legislatively mandated human trafficking training to assist licensees in completing the training.

c. Director of Licensing

Ms. Matthews's report included comparisons between licensing data from the 4th quarter of Fiscal Year 2019 with the current data for Fiscal Year 2020.

d. Director of Enforcement

Ms. Rodriguez reported that 28 cases had been closed since August 1, 2020, with 35 cases pending with legal. Mr. McLaughlin would be presenting 6 Agreed Orders.

Dr. Henry asked a question regarding the average number of days needed to close cases.

NOTE: Ms. Todd requested that Dr. Bronson skip to Agenda Item 8 as she would need to leave the meeting early.

8. Discussion of the Board's delegation of authority to the executive director to dispose of certain license applications when the applicant has a minor criminal conviction pursuant to 22 Texas Administrative Code (TAC) §72.18(m):

Ms. Todd began by explaining that the licensing committee had created a definition for minor criminal convictions and crimes of moral turpitude.

Mr. Burnett discussed the recent updates to Rule 72.18 and the Board's process for considering applicants with criminal history.

NOTE: After Mr. Burnett finished his discussion, Ms. Todd excused herself from the meeting. Dr. Bronson announced that 8 of the 9 Board members were still present and there was still a quorum.

6. Public Comment:

No members of the public requested an opportunity to comment.

7. Discussion of the Board's current continuing education requirements and possible changes:

Dr. White provided a brief overview of the Continuing Education Committee's progress in developing a survey for license holders and sponsors to seek input on potential changes for the Board's continuing education requirements.

Ms. Hertsenberg discussed how she requests that continuing education providers disseminate information to the licensee population as new requirements arise such as the legislatively mandated human trafficking training.

There was much discussion regarding the potential ramifications of requiring continuing education providers to include an examination requirement at the end of presentations. The ultimate goal of more stringent continuing education requirements is to increase awareness of the Board's laws and rules. Mr. Burnett suggested requiring licensees to re-take the Board's Jurisprudence Examination every 4 years.

NOTE: Dr. Neal temporarily left the meeting. Dr. Bronson announced that 7 of the 9 Board members were still present and there was still a quorum.

Mr. Burnett also noted that any changes to continuing education provider requirements would require rulemaking action.

NOTE: Dr. Neal returned to the meeting and Dr. Bronson announced that 8 of the 9 Board members were now present again.

Dr. White and Dr. Bronson discussed holding a stakeholder meeting on the issue.

9. Discussion of the effects on licensees of the Board's former practice of reporting all disciplinary violations, including administrative violations, to CIN-BAD:

Mr. Burnett discussed the history of the now-repealed disciplinary action expunction rule, the reason the Board has no authority to have such a rule to expunge final disciplinary actions, and the current process by which the Board provides letters of explanation to licensees who have past orders on their record.

Dr. White noted that old continuing education materials might still include information that the Board does have the authority to request disciplinary action expunctions. Mr. Burnett explained that final orders do not leave a licensee's record after a certain amount of time.

Mr. McLaughlin discussed some of the technical aspects of reporting to CIN-BAD and the National Practitioner Databank.

Action Taken: At 11:05 A.M., Dr. Bronson allowed for a short break.

Action Taken: At 11:15 P.M., Dr. Bronson reconvened the meeting and Dr. Wofford called the roll.

Present Members:

Dr. Mark Bronson
Dr. Nicholas Baucum
Dr. Michael Henry
Dr. Mindy Neal
Dr. Debra White
Mr. Brandon Allen
Mr. Gus Ramirez
Dr. Scott Wofford

Eight of the nine Board members were present and Dr. Bronson announced that a quorum was re-established.

10. Discussion of the results of the Board's stakeholder meeting regarding stem cells and regenerative therapies:

Dr. Bronson discussed the background behind the issue and some of what was discussed at the meeting. He explained that there were deceptive advertising issues implicated by virtue of the

fact that much of what is marketed as stem cell injections are actually not live tissue and therefore not actually stem cells under the legal definition.

Additional questions are whether a chiropractor can recommend that a patient receive injections of regenerative medicine and whether the chiropractor can procure such medicine and enter into a contractual relationship with a patient to provide such services.

Dr. Henry and Dr. Wofford discussed the nuance between regenerative medicine and stem cells and pointed out that there is clinical value in regenerative medicine. However, for chiropractors, this is more of a scope of practice issue in that patients need to be referred to independent medical doctors who will conduct their own examinations and diagnose the need for the injections. Chiropractors should not be ordering the injections and coordinating payment from patients, and above all, chiropractors should not be dictating care that falls outside the scope of chiropractic.

Dr. Bronson directed staff to create an advisory to the licensee population addressing the Board's position on the issue and to inform the licensees that the Board will take disciplinary action against violations.

11. Discussion and action on requests to sit for the Texas Jurisprudence Examination pursuant to Texas Occupations Code §201.304(a)(2):

a. Matthew Martinez

The staff recommendation was to allow the applicant to sit for the Texas Jurisprudence Examination after taking and passing the Ethics and Boundaries Assessment Services Examination (EBAS) at his expense.

Action Taken: WOFFORD MOVED and WHITE SECONDED to accept the staff recommendation. The Board **APPROVED** the motion unanimously.

b. Robert Louder

The staff recommendation was to allow the applicant to sit for the Texas Jurisprudence Examination after taking and passing EBAS at his expense and then that the license be issued in probationary status for one year.

The Board invited the applicant to speak and address any concerns.

Action Taken: HENRY MOVED and NEAL SECONDED to accept the staff recommendation. The Board **APPROVED** the motion unanimously.

12. Discussion and action on proposed final decision (PFD) orders pursuant to Texas Occupations Code §201.555 and 22 TAC §81.10):

There were none for this meeting.

13. Discussion and action on proposed cease and desist orders pursuant to Texas Occupations Code §201.6015 and Texas Government Code §2001.056:

a. Rodney Martin Matiscik, unlicensed, TBCE Case No. 2019-310

Mr. McLaughlin announced that this item would need to be tabled until the next Board meeting.

14. Discussion and action on default orders pursuant to Texas Occupations Code §201.0555, Texas Government Code §§2001.056(4) and 2001.058(d-1), and 22 TAC §81.6(b):

There were none for this meeting.

15. Discussion and action on proposed agreed orders pursuant to Texas Occupations Code §201.504(a)(1):

a. Dwane Davis, License No. 13115, TBCE Case No. 2018-162

The staff recommendation was that the Board accept the Agreed Order.

Action Taken: HENRY **MOVED** and WOFFORD **SECONDED** to approve the agreed order. The Board **APPROVED** the motion unanimously.

b. Krystal Jasmine Barnett, License No. 11446, TBCE Case No. 2018-082

The staff recommendation was that the Board accept the Agreed Order.

Action Taken: HENRY **MOVED** and RAMIREZ **SECONDED** to approve the agreed order. The Board **APPROVED** the motion unanimously.

c. Shawn S. Delk, License No. 8891, TBCE Case No. 2018-096

The staff recommendation was that the Board accept the Agreed Order.

Action Taken: NEAL **MOVED** and WOFFORD **SECONDED** to approve the agreed order. The Board **APPROVED** the motion unanimously.

d. Day Lee Snell, License No. 4192, TBCE Case No. 2019-050

The staff recommendation was that the Board accept the Agreed Order.

Action Taken: RAMIREZ **MOVED** and NEAL **SECONDED** to approve the agreed order. The Board **APPROVED** the motion unanimously.

e. Benjamin Joseph Hansen, License No. 13309, TBCE Case No. 2018-138

The staff recommendation was that the Board accept the Agreed Order.

Action Taken: RAMIREZ **MOVED** and NEAL **SECONDED** to approve the agreed order. The Board **APPROVED** the motion unanimously.

NOTE: Mr. Allen excused himself from the meeting. Dr. Bronson announced that there were still 7 of the 9 Board members present and there was still a quorum.

f. Steven Huy Le, License No. 9521, TBCE Case No. 2018-144

The staff recommendation was that the Board accept the Agreed Order.

Action Taken: HENRY MOVED and RAMIREZ SECONDED to approve the agreed order. The Board **APPROVED** the motion unanimously.

16. Discussion and action on required suspension or revocation of licenses for certain offenses pursuant to Texas Occupations Code §201.5065:

a. Jafar Nassiri, License No. 6463, TBCE Case No. 2019-257

Mr. McLaughlin announced that this item would need to be tabled until the next Board meeting.

17. Discussion and action on adopting proposed new Board Rule 22 TAC §78.5 (Delegation of Radiologic Procedures):

NOTE: Dr. Bronson temporarily left the meeting and Dr. Henry assumed leadership. There were still 6 Board members present and there was still a quorum.

Mr. Burnett explained that the Board received a single comment on the proposed new rule. The comment included some helpful suggestions on how to make the language of the rule clearer and more specific. The suggested changes were non-substantive.

Action Taken: WOFFORD MOVED and RAMIREZ SECONDED to adopt the proposed new rule 22 Texas Administrative Code §78.5 as published in the Texas Register with the suggested non-substantive changes. The Board **APPROVED** the motion unanimously.

18. Discussion and action on adopting proposed new Board Rule 22 TAC §80.12 (Retention of Investigative Records):

Mr. Burnett explained that this particular proposed new rule was required by Texas Occupations Code Chapter 201 and that the State Auditor's Office noted in its recent report on the Board that the Board had not enacted a rule on the subject as required. He recommended that the Board adopt the rule as proposed without changes.

NOTE: Dr. Bronson returned to the meeting and Dr. Henry returned leadership to Dr. Bronson. Seven of the nine Board members were now present again.

Action Taken: NEAL MOVED and HENRY SECONDED to adopt the proposed new rule 22 Texas Administrative Code §80.12 as published in the Texas Register. The Board **APPROVED** the motion unanimously.

19. Discussion and action on proposing a new Board rule, 22 TAC §75.9 (Closing a Practice):

Mr. Burnett explained that this rule proposal was in response to the many questions received by Board staff on what licensees should do to close practices. No comments were received on the proposed new rule. The staff recommendation was to propose the new rule as discussed.

Action Taken: NEAL **MOVED** and BAUCUM **SECONDED** to propose the new rule 22 Texas Administrative Code §75.9 as discussed. Dr. Henry then proposed a small amendment to the language in the proposal.

NOTE: Dr. White temporarily left the meeting. Dr. Bronson announced that there were still 6 of the 9 Board members present and there was still a quorum.

Action Taken: WOFFORD **MOVED** and NEAL **SECONDED** to propose the new rule 22 Texas Administrative Code §75.9 as discussed with Dr. Henry's suggested change. The Board **APPROVED** the motion unanimously.

20. Discussion and action on proposing a new Board rule, 22 TAC §78.10 (Prohibitions on Animal Chiropractic):

Mr. Burnett explained the history behind this proposal and noted that the Board would be proposing that animal chiropractic is outside the scope of chiropractic but that chiropractors could perform it as long as rules of the Texas Board of Veterinary Medical Examiners are followed. The staff recommendation was to propose the new rule as discussed.

NOTE: Dr. White returned to the meeting and Dr. Bronson announced that 7 of the 9 Board members were now present again.

Action Taken: NEAL **MOVED** and WOFFORD **SECONDED** to propose the new rule 22 Texas Administrative Code §78.10 as discussed. The Board **APPROVED** the motion unanimously.

21. Discussion and action on proposing the repeal and replacement of 22 TAC §80.4 (Schedule of Penalties):

Mr. Burnett explained that this rulemaking action was necessary to update the penalty schedule due to the massive rulemaking changes the Board had recently undertaken. The staff recommendation was to propose the new rule as discussed.

Action Taken: HENRY **MOVED** and NEAL **SECONDED** to propose the repeal and replacement of 22 Texas Administrative Code §80.4 as discussed. The Board **APPROVED** the motion unanimously.

22. Legal Matters:

There were none for this meeting.

23. Discussion and action on approving Dr. Mark Bronson as the Board's delegate to the annual meetings of the Federation of Chiropractic Licensing Boards and the National Board of Chiropractic Examiners on April 28 to May 2, 2021:

Action Taken: WOFFORD **MOVED** and RAMIREZ **SECONDED** to approve Dr. Bronson as the Board's delegate. The Board **APPROVED** the motion unanimously.

24. Requests from Board members for future agenda items:

Dr. Henry noted that the Board would continue its discussion on possible continuing education changes at the next meeting.

25. Adjournment:

Action Taken: HENRY **MOVED** and WOFFORD **SECONDED** to adjourn the meeting at 12:26 P.M. The Board **APPROVED** the motion unanimously.

STATEMENT: I affirm that the above is a true and correct rendering of the minutes for the Texas Board of Chiropractic Examiners Board Meeting held on the above date. The minutes from the Board Meeting held on August 20, 2020, were **APPROVED** by the Texas Board of Chiropractic Examiners at its regularly scheduled meeting held on November 19, 2020.



Patrick Fortner
Executive Director
Texas Board of Chiropractic Examiners

December 7, 2020

Date